IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 960 OF 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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THE UNITED INDIA INSURANCE CO.LTD. - Appellant(s)
Versus
PUSHPABEN WD/O. VAGHARI BABULAL
KESHABHAI & ORS. - Respondent(s)

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Appearance :
Shri Vibhuti Nanavati for Appellant(s).
None for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/08/2007

ORAL JUDGMENT

Shri Vibhuti Nanavati, learned Counsel for the appellant.

None for respondents Nos.1 to 3 though the name of Shri Rajnikant Patel appears. Office Report shows that respondent Nos.4 and 5 are served.

2. The appellant-Insurance Company, being aggrieved by the judgement and award dated 22nd April, 1991 passed by the learned Motor Accident Claims Tribunal (Main), Mehsana in M.A.C.P. No.811 of 1986, is before this Court with a submission that the liability of the Insurance Company would be limited to Rs.15,000/- only and the learned Tribunal below was unjustified in holding the liability *qua* the Insurance Company to be unlimited.

3. Undisputedly, the policy does not say that the liability of the Insurance Company shall be limited. However, the Insurance Company has examined the person, who had prepared the policy, to prove that the insured had paid a sum of Rs.17/- per passenger, which would mean that the risk to the extent of Rs.15,000/- only per passenger was covered.

In the opinion of this Court, this evidence would not be sufficient to show or prove that the liability was restricted to the extent of Rs.15,000/- only. The terms of the policy, in fact, are part of the concluded contract between the parties and the terms of the said contract, as incorporated in the policy, would bind the parties. In the

present case, if the policy does not say that the liability was restricted to the extent of Rs.15,000/- only, then, no fault with the finding recorded by the learned Tribunal below in relation to the unlimited liability can be found.

4. I find no reason to interfere. The appeal deserves to and is, accordingly, dismissed. No costs.

[R.S.Garg, J.]

*kamlesh**